



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2021-UNAT-1105

**Bulent Peker
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Martha Halfeld Judge John Raymond Murphy
Case No.:	2020-1396
Date:	19 March 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Mohamed Abdou, OSLA
Counsel for Respondent:	Jiyoung Kwon

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Bulent Peker (Mr. Peker), a staff member currently serving as a Senior Refugee Status Determination Advisor at the P-4 Level in Geneva with the United Nations High Commissioner for Refugees (UNHCR).
2. Mr. Peker filed an application with the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) challenging the Administration's decision denying him reimbursement for a portion of emergency medical expenses incurred on a private trip to Geneva, while he was stationed in Ankara, Turkey. On 23 March 2020, the UNDT issued Judgment No. UNDT/2020/044,¹ dismissing the application and finding that Mr. Peker did not demonstrate any discernible error in the interpretation or application of the Medical Insurance Plan (MIP) Rules, which forbade reimbursement in his situation.
3. For reasons set out below, we dismiss the appeal and affirm the UNDT Judgment.

Facts and Procedure

4. Mr. Peker joined UNHCR on 3 June 2002 as a Protection Assistant at the G-6 Level serving in Ankara. On 28 February 2017, he was appointed Refugee Status Determination Advisor at the P-3 Level serving in Copenhagen, and on 14 May 2020, he was promoted to Senior Refugee Status Determination Advisor at the P-4 Level in Geneva.
5. On 3 August 2015, while serving in Ankara, Mr. Peker received an attestation related to a visa request for his personal travel to Greece from 9 to 14 August, in which the Administration certified that he was "fully covered by the United Nations Medical Insurance Plan (MIP) against all possible medical expenses that may occur during travel to and in any country." The attestation indicated the recipient as the Embassy of Hellenic Republic.

¹ The Dispute Tribunal first ruled on the application of Mr. Peker by Judgment No. UNDT/2018/110 dated 19 November 2018, which on appeal, this Tribunal by Judgment No. 2019-UNAT-945 remanded the case for a *de novo* review. The instant appeal emanates from the UNDT's *de novo* determination in *Peker v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/044 dated 23 March 2020 (Impugned Judgment).

6. Later in November 2015, when Mr. Peker was visiting his partner in Switzerland, he was hospitalized on an emergency basis at the Hôpital de la Tour in Geneva following an acute unexpected attack. The total medical expenses incurred amounted to CHF 31,006.60, which included doctor's fees and hospitalization expenses, including three nights in intensive care. The UNHCR Office in Ankara settled those expenses in advance on behalf of Mr. Peker in January and March 2016, pending processing under the MIP.

7. At the end of December 2015, the UNHCR Office in Ankara contacted the American Hospital in Istanbul, a renowned medical facility where costs are at the higher end. The American Hospital determined that the estimated cost of similar treatments in Turkey was TRY 52,860.30 of which TRY 48,288.38 was reimbursable under the MIP (USD 16,608.49).²

8. In light of the shortfall between the total medical expenses incurred (CHF 31,006.60 or USD 31,006.60) and the reimbursable amount under the MIP (USD 16,608.49), a Senior Human Resources Officer at UNHCR Office in Ankara requested the MIP Management Committee (the MIP Committee) to consider Mr. Peker's case under the MIP hardship and stop-loss provisions. These provisions come into effect whenever out-of-pocket medical expenses reach half a staff member's monthly net base salary. In such instances, the plan will reimburse the staff member an additional 80 percent on the residual.

9. On 20 July 2016, the MIP Committee considered Mr. Peker's case under the MIP hardship provision. The MIP Committee was of the view that Mr. Peker had incurred medical expenses while vacationing in Switzerland and because the MIP does not provide worldwide coverage, reimbursement should be based on reasonable and customary cost at the staff member's duty station (Ankara). Thus, the MIP Committee recommended no additional reimbursement be made regarding the out-of-pocket amount incurred in Switzerland.

10. By a memorandum dated 31 August 2016, the MIP Committee explained that the: "MIP is priced and designed for local use only and, as per its rules, does not provide worldwide coverage. Therefore, medical expenses incurred outside the subscriber's country should normally be reimbursed based on the reasonable and customary cost at the duty station." As such, the MIP Committee explained the difference between the actual medical expenses in Switzerland and the certified amount in Turkey is not taken into consideration in calculating the out-of-pocket

² Between January and March 2016, the exchange rate between US Dollar and Turkish Lira was approximately 1 : 3, while the exchange rate between US Dollar and Swiss Franc was approximately 1 : 1.

amount. Hence, the committee recommended that the request for payment under MIP hardship and stop-loss provisions be rejected since the difference between Geneva and Ankara costs are not eligible under the MIP.

11. On 21 November 2016, Mr. Peker was notified of the decision of the Administration to recover USD 14,707.15 (Geneva Actual Medical Costs USD 31,315.45 – Estimated Equivalent Medical Costs in Turkey USD 16,608.49), following the MIP Committee’s recommendation that no exception be made to consider the total medical costs incurred in Switzerland.

12. On 3 January 2017, Mr. Peker requested management evaluation of the Administration’s decision to recover USD 14,707.15 from his salary. In the absence of a reply, Mr. Peker filed an application to the Dispute Tribunal on 20 February 2017 challenging the Administration’s decision to recover the USD 14,707.15 in medical expenses that was already settled by the Organization.

13. On 24 March 2017, the Secretary-General filed a timely reply stating that the contested decision had been properly made under the MIP Rules and that Mr. Peker had failed to show that his rights had been violated.

14. On 22 October 2018, Mr. Peker moved for disclosure of several documents including those related to the calculation of “reasonable and customary expenses” of his treatment in Turkey. The Dispute Tribunal rejected this motion, considering it irrelevant for the disposal of the case.

15. On 31 October 2018, the UNDT held a hearing on the merits and heard from the former MIP Committee Chairman and the former Director of the UNHCR Division of Human Resources Management (DHRM).

16. On 19 November 2018, the UNDT dismissed the application, finding that the MIP Rules clearly provide that only reasonable and customary expenses at the duty station are covered and that Mr. Peker’s case did not fall under any exceptions. The Dispute Tribunal further held that the hardship and stop-loss provisions would not apply in Mr. Peker’s case because the medical expenses were incurred outside of the duty station.

17. On 28 June 2019, the Appeals Tribunal remanded the case by Judgment No. 2019-UNAT-945 for a *de novo* determination on two grounds: (i) The audio recording of the oral hearing before the UNDT contained only the final submissions of both counsels but not the testimony of Mr. Peker and the two witnesses for the Secretary-General; (ii) The UNDT erred in rejecting Mr. Peker's motion for production of documents related to the calculation of reasonable and customary expenses and directed the Dispute Tribunal to order their disclosure.

18. On 20 September 2019, the Dispute Tribunal ordered the Secretary-General to produce the documents sought by Mr. Peker in his previous motion related to the calculation of reasonable and customary expenses. The UNDT also granted leave to the parties to file further submissions concerning those documents. Additionally, the Dispute Tribunal also directed Mr. Peker to file his witness statement and the Secretary-General to file written statements of his witnesses.

19. On 2 October 2019, the Secretary-General filed the documents sought by Mr. Peker as well as written statements of his witnesses. On 9 October 2019, Mr. Peker filed his submission in relation to the Secretary-General production and his own witness statement. In his submission, Mr. Peker outlined various errors in UNHCR's calculation of medical costs and stated that the medical procedure reported to the MIP by UNHCR was for one simple gallbladder operation when in fact it was a more complex operation, involving two medical interventions – one laparoscopic gallbladder surgery and one more serious liver abscess drainage and resection procedure.

20. On 16 October 2019, the Secretary-General replied to Mr. Peker's submissions, arguing that Mr. Peker did not produce evidence substantiating his claim that UNHCR's calculation was erroneous. The Secretary-General argued that all costs were accounted for but acknowledged that its estimation did in fact contain errors but such errors were in favor of Mr. Peker. To wit, the estimates were based in Istanbul, which has a significantly higher cost of living than Ankara, and therefore such errors were in favor of Mr. Peker. The Secretary-General presented a quotation of Acibadem Hospital in Ankara dated October 2019 following which the estimated cost for Mr. Peker's treatment was TRY 75,208.72. It is noteworthy to point out that in case a reasonable and customary rate for the medical service is not available, Section 6.4 of the MIP would apply under which Mr. Peker would be entitled only to a lower reimbursement than the one he actually received.

21. On 18 October 2019, Mr. Peker via e-mail indicated that he would seek the Dispute Tribunal's leave to reply to the Secretary-General's submission of 16 October 2019 but no formal motion was ever filed in this regard.

22. On 22 October 2019, the Secretary-General filed a motion for leave to file additional evidence and submissions and included a quotation received from Guven Hospital in Ankara, which related to standard costs incurred in connection with a "surgery involving a laparoscopic cholecystectomy and the draining and resection of a segment IV liver abscess." The estimated cost for Mr. Peker's medical treatment at Guven Hospital was TRY 65,822.06. The Secretary-General's motion was granted, and the evidence was admitted into the case record.

23. On 23 March 2020, the UNDT issued Judgment No. UNDT/2020/044 in which it found that Mr. Peker was not entitled to the benefit of the stop-loss provision under the MIP Rules. The tribunal reasoned that the MIP Rules clearly provide that only reasonable and customary expenses at the duty station are covered by the MIP. For medical expenses incurred out of the duty station, there is a limitation in the coverage and only the equivalent cost at the duty station will be recognized. The Dispute Tribunal posited that under Mr. Peker's reasoning, the MIP would actually have to cover all expenses worldwide, without any limitation – which is clearly against the rules of the plan.

24. Second, the UNDT reasoned that the UNHCR did not commit any procedural or factual errors in calculating the reasonable and customary expenses at Mr. Peker's duty station. The tribunal explained because the MIP Rules do not require the Administration to obtain multiple quotations and because Mr. Peker had not raised any concern related to the fact that the American Hospital was a valid reference to establish reasonable and customary expenses at the duty station, the tribunal found no error in the procedure. The tribunal also explained that the evidence shows that the complications of Mr. Peker's case, including the liver abscess, was properly considered by the Administration.

25. In addition, the tribunal also reasoned that even though the Memorandum of the Chairman of the MIP Committee to the Director, DHRM, is not factually accurate, however, such inaccuracy had no practical impact on the contested decision. The tribunal explained that the purpose of the memorandum was only regarding the application of the non-stop and hardship provisions – not determination of the amount of reasonable and customary expenses at the duty station.

26. Last, the UNDT found the attestation dated 3 August 2015 to the Greek Embassy did not constitute a promise by UNHCR that Mr. Peker's medical expenses in Switzerland would be covered in full. The tribunal reasoned that this is because the source of law in this case is the MIP Rules and the attestation issued by human resources was only to facilitate a visa for private travel and as such can't supersede the MIP Rules.

27. Mr. Peker filed an appeal on 23 May 2020, and the Secretary-General filed his answer on 28 July 2020.

Submissions

Mr. Peker's Appeal

28. Mr. Peker submits that the UNDT erred in denying him an opportunity to address the Secretary-General's submissions and evidence. The Secretary-General was allowed to raise novel arguments concerning the calculation of reasonable and customary expenses in his submission of 16 October 2019 while he, Mr. Peker, was not afforded an opportunity to respond or comment on them which was a breach of his due process rights.

29. The UNDT erred in law and fact in finding that UNHCR's initial estimates properly reflected reasonable and customary expenses. Following Judgment No. 2019-UNAT-945, the Dispute Tribunal was to conduct a *de novo* determination on the calculation of reasonable and customary expenses pursuant to the disclosure of all relevant materials. UNDT failed in that regard as it did not address the parties' submissions on costs in the Impugned Judgment and did not specifically examine Mr. Peker's submission regarding UNHCR's estimate not including a liver abscess drainage and resection procedure. As such, the Dispute Tribunal could not have reasonably concluded that the costs estimation were correct.

30. The UNDT erred further in fact in failing to apply the correct currency exchange rate in respect of the new estimates adduced by UNHCR. The UNDT failed to consider the significant depreciation of the Turkish Lira when it considered new estimates of the costs which Mr. Peker would have incurred in 2016. The Dispute Tribunal applied the prevailing rate in October 2019 (1 Dollar : 5.66 Turkish Lira) instead of the rate applicable at the relevant time at the beginning of 2016 when the rate was 1 Dollar : 3 Turkish Lira. Based on the relevant January to March 2016 rate, the estimates should have been USD 25,069.57 for Guven Hospital and USD 21,940.68 for Acibadem Hospital. Instead, the UNHCR calculated estimates based on the prevailing

October 2019 rate, which as a result of Turkish Lira depreciation was significantly less (Güven Hospital: USD 11,625.23 and Acibadem Hospital: USD 13,283.07). Mr. Peker is seeking customary costs as the average between the estimates from the two hospitals, which would be USD 23,505.13 in 2016.

31. Considering that USD 14,707.15, was already deducted from his salary during the last few years, Mr. Peker requests reimbursement in the amount of USD 6,896.64.

The Secretary-General's Answer

32. The UNDT correctly found that the MIP's stop-loss provisions did not apply to Mr. Peker's situation.

33. Under the "presumption of regularity" applied to official acts, the management need only to "minimally show" that the official act was regularly performed, while Mr. Peker holds the burden to "show by clear and convincing evidence that [his] rights have been violated."

34. The Dispute Tribunal correctly applied the MIP provisions to determine that Mr. Peker was eligible to be reimbursed only for the "reasonable and customary charges applicable at the subscriber's duty station,"³ and that no exceptions, including the hardship and stop-loss provisions, were applicable since the expenses were incurred outside his duty station. In Mr. Peker's case, the out-of-pocket cost (based on his duty station) amount was USD 1,580.23 which was less than half his monthly salary and therefore did not trigger the application of the stop-loss provisions.

35. In requesting to be reimbursed "the amount of USD 6,896.64 recovered in excess of the reasonable and customary medical expenses," Mr. Peker was effectively conceding that the UNDT was correct in finding that he was only entitled to reimbursements amounting to the reasonable and customary medical expenses at his duty station and that stop-loss provisions of the MIP did not apply to his case.

36. The UNDT correctly determined reasonable and customary expenses at the duty station. The UNDT correctly took into consideration the quotations submitted by the UNHCR, pertaining to two hospitals in Ankara, Güven Hospital and Acibadem Hospital, which provided, upon

³ See Section 6.2 of the Administrative Instruction UNHCR/AI/2016/3 (Administrative Instruction on the Medical Insurance Plan (MIP) — Statutes and Internal Rules).

UNHCR's request, estimated costs for the treatment that had actually been received by Mr. Peker (laparoscopic cholecystectomy and drainage and resection of a segment IV liver abscess surgery). The estimates provided by Guven Hospital and Acibadem Hospital were equivalent to USD 11,625.23 and USD 13,283.07, respectively, at the United Nations operational rate of exchange in October 2019, when the quotations were issued. The amount of the two quotes is therefore lower than the estimated costs at the American Hospital, which was USD 17,620 (of which only USD 16,608.49 was reimbursable) when converted from Turkish Lira at the relevant time in 2016. The Organization applied the highest and most favorable quote from Mr. Peker's perspective, for his benefit, i.e., the quote from the American Hospital.

37. The Dispute Tribunal correctly exercised its jurisdiction in managing the case. The Secretary-General's 16 October 2019 submission did not consist of novel submissions and evidence, except for attaching the quotation received from Acibadem Hospital providing the estimated cost for Mr. Peker's medical treatment. Also, Mr. Peker's claim that he was denied due process lacks merit because he was afforded all opportunities to present his views and evidence in response to UNDT Order No. 68 (GVA/2019), but he elected not to do so. Over five months passed between Mr. Peker's indication that he would seek leave to reply to the Respondent's submission of 16 October 2019 and the issuance of the Impugned Judgment. The UNDT correctly exercised its jurisdiction by ordering the production of all relevant evidence and managing the case, and Mr. Peker was afforded the opportunities to propose new evidence and arguments during the proceedings.

Considerations

38. We note that Mr. Peker, on appeal, neither challenges the UNDT's finding that the MIP stop-loss provision did not apply to his out-of-duty station medical expenses nor the UNDT's finding that the 3 August 2015 attestation to the Greek Embassy did not constitute a promise by UNHCR that Mr. Peker's medical expenses in Switzerland would be covered in full. Insofar, the UNDT judgment stands, and we will not deal with these issues on appeal.

39. The only remaining issue on appeal is the question whether the UNDT did commit any errors of law, fact or procedure in holding that it was lawful for the Secretary-General to calculate the reasonable and customary expenses for Mr. Peker's (November 2015) medical treatment in Geneva on the basis of the estimate provided by the American Hospital in Istanbul and, consequently, to recover USD 14,707.15 from Mr. Peker.

Due process

40. Mr. Peker submits that the UNDT breached his due process rights. While the Secretary-General was allowed to raise novel arguments and present new evidence concerning the calculation of reasonable and customary expenses in his submissions of 16 and 22 October 2019, he, Mr. Peker, was not afforded an opportunity to respond or comment on them.

41. We do not agree. Mr. Peker had ample opportunity to address the Secretary-General's submissions and evidence of 16 and 22 October 2019. The UNDT issued its Judgment only on 23 March 2020. From October 2019 until March 2020, Mr. Peker had about five months to respond. Neither does due process require the UNDT to explicitly request Mr. Peker to respond to the Secretary-General's submissions nor to wait longer until issuing its Judgment.

Calculation of the reasonable and customary expenses

42. We find that the UNDT did not commit an error of law or fact in accepting the December 2015 estimate of the American Hospital in Istanbul (AHI) as the basis for the calculation of reasonable and customary expenses in Mr. Peker's case.

43. The UNDT relied on the estimate of AHI which, according to the Secretary-General, resulted in medical costs of TRY 52,860.30, of which TRY 48,288.38 (or USD 16,608.49) was reimbursable under the MIP.

44. However, it is evident and undisputed between the parties that the December 2015 AHI estimate does not, in itself, reflect the reasonable and customary expenses for Mr. Peker's medical treatment. In November 2015, two medical interventions for Mr. Peker took place in Geneva, one related to a laparoscopic gallbladder surgery, and the other to a liver abscess drainage and resection procedure. On 23 December 2015, the AHI was asked to provide information (only) about the cost of an operation on the gallbladder and four days of intensive care. One day later, AHI answered that for an operation on the gallbladder, one would usually stay one day at the hospital (there would be no need for a stay of four days nor of intensive care), and this would cost between TRY 27,000 to TRY 28,000, and that the daily

cost of intensive care is approximately TRY 8,000 to TR Y10,000.⁴ As the second treatment, the liver abscess drainage and resection procedure, is not mentioned at all in the AHI estimate, it cannot, in itself, be accepted as a valid basis to calculate the reasonable and customary expenses for Mr. Peker's November 2015 medical treatment had it been undertaken in Turkey.

45. For its finding that the AHI estimate represents a correct calculation of the reasonable and customary expenses for Mr. Peker's November 2015 medical treatment, the UNDT refers to the estimates of Guven Hospital and Acibadem Hospital, which the Secretary-General submitted in October 2019. Applying the current exchange rate, the UNDT comes to the conclusion that the cost at those hospitals (TRY 65,822.06 or USD 11,625.23 at Guven Hpospital and TRY 75,208.72 or USD 13,283.07 at Acibadem Hospital) are lower than the cost at AHI, and therefore, AHI's figures represent a fair estimate of the medical costs.

46. Mr. Peker has not demonstrated, and we cannot detect any error in this finding of the UNDT. The information by Guven and Acibadem hospitals present a valid estimate on the cost of Mr. Peker's medical treatment, as both hospitals did take into account not only the gallbladder operation but also the liver abscess drainage and resection procedure. On appeal, Mr. Peker expressly accepts these estimates as a fair representation of his November 2015 medical treatment in Geneva.

47. Contrary to Mr. Peker's allegations, it was not erroneous of the UNDT not to apply the January to March 2016 exchange rate (1 USD : 3 TRY). As the estimates from Guven and Acibadem hospitals date from October 2019, it was not possible for the UNDT to apply the former exchange rate. Between 2016 and 2019, the annual inflation rate in Turkey vastly increased, as elaborated below. Consequently, costs for medical treatments at the end of 2015 differ substantially from costs for medical treatments in October 2019, when the estimates of Guven and Acibadem hospitals were presented. At the end of 2015, costs for medical treatments in Turkey were much lower, and the Turkish currency was stronger. In October 2019, on the other hand, costs for medical treatments had increased and the Turkish currency had weakened considerably. In demanding that the January to March 2016 exchange rate be applied to the October 2019 estimates, Mr. Peker attempts to combine the

⁴ Annex No. 13 to Respondent's Answer (English translation of UNHCR email to American Hospital).

advantages of the higher prices for medical services in October 2019 with those of the stronger Turkish currency in January to March 2016. It is obvious that this cannot be allowed on appeal.

48. To put the UNDT's finding into doubt, Mr. Peker, on appeal, has the obligation of showing and explaining why, considering the development of both exchange rate and inflation, the October 2019 estimates would not allow the conclusion that the December 2015 information of AHI represents a fair estimate for the cost of his medical treatment, had it been undertaken at his duty station in Ankara. This Mr. Peker did not do, and, consequently, his appeal must fail.

49. However, we understand that Mr. Peker has difficulties in accepting the calculation of his reimbursement. The December 2015 estimate of AHI was incomplete as it did not contain the liver abscess drainage and resection procedure. The October 2019 estimates of Guven and Acibadem hospitals do not offer any express information on how much Mr. Peker's treatment would have cost at the end of 2015/beginning of 2016. The relevant question in this case is not what Mr. Peker's medical treatment would cost now or how much it would have cost in October 2019 when the Secretary-General presented the new estimates, or in March 2020 when the UNDT issued its Judgment, but what it would have cost at the end of 2015/beginning of 2016 when Mr. Peker stayed in hospital in Geneva and the reimbursable amount under the MIP Rules was calculated by the Secretary-General. Therefore, for the future, we strongly recommend that estimates for reasonable and customary expenses be gathered on the correct basis from the beginning (that is include the complete medical treatment and refer to the relevant time) to enable the staff member to better understand the calculation of reimbursements in such cases.

50. In the present case, however, there is no reason to assume that the December 2015 estimate of AHI, although not containing the liver abscess drainage and resection procedure, does not represent a fair calculation of customary and reasonable expenses of Mr. Peker's medical treatment had it occurred not in Geneva but at his duty station in Ankara. The total inflation in Turkey from November 2015 to October 2019 was 61,94%.⁵ The chart below

⁵ See:
<https://www.inflationtool.com/turkishlira?amount=40646&year1=2015&month1=11&year2=2019&month2=10&subject=Total>

demonstrates the effects of the inflation rate on the estimates of Guven and Acibadem hospitals (using conversion rates 1 USD : 3 TRY for 2015 and 1 USD : 5.66 TRY for 2019).

	November 2015		October 2019	
	₺	\$	₺	\$
Acibadem	46,442	15,480	75,208	13,288
Guven	40,646	13,549	65,822	11,629
Average	43,544	14,515	70,515	12,458

51. It follows that it was not detrimental to Mr. Peker but lawful to calculate the reasonable and customary expenses on the basis of the AHI estimate (TRY 52,860.30, of which TRY 48,288.38 or USD 16,608.49 were reimbursable) which is higher than the Guven and Acibadem average estimate when “transferred” to November 2015 (TRY 43,544 or USD 14,515). We are satisfied that Mr. Peker was fairly and justly treated.

Judgment

52. The appeal is dismissed, and the UNDT Judgment is confirmed.

Original and Authoritative Version: English

Dated this 19th day of March 2021.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Murphy
Cape Town, South Africa

Entered in the Register on this 4th day of May 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar